UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 14

CONSOLIDATED COMMUNICATIONS D/B/A ILLINOIS CONSOLIDATED TELEPHONE COMPANY,)))		
and))))	Cases and	14-CA-094626 14-CA-101495
LOCAL 702, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO,))		

EXCEPTIONS OF CONSOLIDATED COMMUNICATIONS, INC. TO DECISION OF ADMINISTRATIVE LAW JUDGE AND PROCEEDINGS

Consolidated Communications, Inc. ("Consolidated" or "the Company") respectfully submits its exceptions to the Decision of Administrative Law Judge ("ALJ") Arthur J. Amchan issued on November 19, 2013 and the proceedings. Argument, record cites, and legal authority in support of these exceptions are contained in a separate brief in support of Consolidated's exceptions, filed contemporaneously herewith.

Consolidated excepts to the following¹:

1. The ALJ's conclusions of law where he found that the Company violated Section 8(a)(3) and 8(a)(1) of the Act by discharging Brenda Weaver and Patricia Hudson on December 17, 2012, and suspending Michael Maxwell and Eric Williamson on December 2012, P. 22, as Consolidated did not violate the Act.

- 2. The ALJ's order, P. 23-24, as Consolidated did not violate the Act.
- 3. The ALJ's remedy, P. 22, as Consolidated did not violate the Act.
- 4. The ALJ's analysis of whether the conduct at issue constituted violence or a threat of violence in determining whether the conduct at issue constituted misconduct and whether the misconduct was serious enough to lose protection of the Act, P. 4, 13, 14, 21, 22, as this is an erroneous legal standard.
- 5. The ALJ's failure to apply and follow the Board's decision in *Clear Pine Mouldings*, 268 NLRB 1044 (1984) and subsequent decisions consistent with this decision that apply to the case. Passim; P. 4, 13, 14, 21, 22.
- 6. The ALJ's error in analyzing the conduct of Ms. Weaver and Ms. Hudson as to Mr. Conley and Mr. Diggs as strike-related and finding their conduct protected, P. 18-19, as it was not protected activity.
- 7. The ALJ's failure to properly apply the burden of proof in striker misconduct cases. Passim; P. 12, 20, 21. In so excepting, Consolidated excepts to the ALJ's failure to find that the Company demonstrated its honest belief in disciplining the employees, and instead merely "assuming" the Company demonstrated its honest belief. P. 19-20.
- 8. The ALJ's conclusion that Company witnesses had a bias against the disciplined employees, which is unsupported by the record, and subsequent discrediting of aspects of their testimony. P. 7-16. Consolidated further excepts to this error as depriving it of its due process rights. As a remedy for the ALJ's bias against Company witnesses, to the extent any portion of this case is to be remanded to an administrative law judge, the Board should assign the case to a

¹ Page references refer to the ALJ's Decision.

different ALJ, and not remand it to the current ALJ, as that would further deprive Consolidated of its due process rights.

- 9. The ALJ's disparate treatment of Company witnesses versus the disciplined employees, where he imposed on the Company witnesses a duty to call the police, a duty to contemporaneously provide accounts of the incidents, and found them biased and self-interested without record support, yet failed to apply any similar findings against the disciplined employees despite the evidence indicating such. P. 4, 7-16.
- 10. The ALJ's discrediting of witness testimony and evidence from Ms. Rich, Ms. Dasenbrock and Ms. Walters where the ALJ found that the witnesses were not identified or interviewed contemporaneously. P. 7, 15. Consolidated further excepts to this error as depriving it of its due process rights. Consolidated further excepts that to the extent the ALJ applied this flawed reasoning, he failed to apply it Ms. Hudson, Ms. Weaver and Mr. Williamson, all who failed to provide their accounts for several months.
- 11. The ALJ's placement of a duty on the targets of the incidents to have reported the incidents to the police in order to find that they occurred. P. 8, 12, 14, 16, 19. Consolidated further excepts to the ALJ's misapplication of the evidence, which indicates that the targeted employees acted rationally in reporting the incidents through the Company rather than the police. P. 8, 12, 14, 16, 19.
- 12. The ALJ's focusing on the efforts of and placing of a duty on Mr. Rankin and Mr. Conley to avoid the effects of Ms. Hudson's and Ms. Weaver's conduct by turning off of the road rather than focusing on whether Ms. Hudson and Ms. Weaver engaged in misconduct that would reasonably tend to coerce or intimidate. P. 9-11, 13. Consolidated further excepts to the

ALJ's misconstrual of the record as to Mr. Rankin's ability to avoid the misconduct of Ms. Hudson and Ms. Weaver. P. 13.

- 13. The ALJ's failure to heed Board precedent in requiring that the disciplined employees engaged in all acts which contributed to their discipline. P. 4, 20-22.
- 14. The ALJ's misconstrual of and failure to fully and properly apply the testimony of the Company witnesses as to the misconduct of the disciplined employees. Passim; P. 4, 6-16, 19-22.
- 15. The ALJ's failure to consider, in evaluating the disciplined employees' conduct, the surrounding circumstances, including the chaotic strike line conditions, which enhanced the coercive and threatening nature of Mr. Williamson, Ms. Hudson's and Ms. Weaver's misconduct. Passim; P. 6-17, 20-22.
- 16. The ALJ's reliance upon/consideration of a meeting and the events occurring at the meeting held by Respondent with representatives from Huffmaster Crisis Response, LLC (which the ALJ erroneously referred to as Huffmaster Security Company) ("Huffmaster") on December 9, 2012 for any factual, credibility or legal findings in this case. Consolidated excepts to any reliance upon/consideration of this meeting as irrelevant to or as having at most minimal probative bearing on the issues of the case. P. 4-5.
- 17. The ALJ's reliance upon/consideration of a written document prepared by Huffmaster that was provided to some Consolidated employees for any factual, credibility or legal findings in this case. Consolidated further excepts to the ALJ's characterization of the document as "written instructions." Consolidated excepts to any reliance upon/consideration of this document as irrelevant to or as having at most minimal probative bearing on the issues of the case. P. 5.

- 18. The ALJ's finding that some of the 27 customer service representatives who work in Mattoon were present at the Huffmaster December 9 meeting, which is contrary to the record. P. 4-5. Consolidated further excepts to any reliance upon/consideration of this erroneous finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 5.
- 19. The ALJ's reliance upon his finding that the Huffmaster representative "instructed" the attendees as to how to conduct themselves during the strike in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 5.
- 20. The ALJ's finding that the picketers complied with the Mattoon Police Chief Jeffrey Branson's instruction to get out of the roadway which is contrary to the record. Consolidated further excepts to any reliance upon/consideration of this erroneous finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 5.
- 21. The ALJ's failure to apply adverse inferences or even consider the General Counsel's and Union's failure to call striker witnesses to the Maxwell incident (P. 3-4), the Greider incident (P. 6-7), the Rankin incident (P. 13-14) and the Williamson incident (P. 16), who allegedly would have provided positive testimony to the disciplined employees.
- 22. The ALJ's misconstrual of and failure to fully and properly apply Mr. Conley's testimony as to the misconduct. P. 8-13, 19-21.
- 23. The ALJ's misconstrual of and failure to fully and properly apply Mr. Diggs' testimony as to the misconduct. P. 10-13, 19-21.
- 24. The ALJ's misconstrual of and failure to fully and properly apply Mr. Rankin's testimony as to the misconduct. P. 13-14, 20-21.
- 25. The ALJ's misconstrual of and failure to fully and properly apply Ms. Dasenbrock's testimony as to the misconduct. P. 8, 14-16, 20-21.

- 26. The ALJ's misconstrual of and failure to fully and properly apply Mr. Fetchak's testimony as to the misconduct. P. 4, 20.
- 27. The ALJ's misconstrual of and failure to fully and properly apply Ms. Redfern's testimony as to the misconduct. P. 16, 21-22.
- 28. The ALJ's misconstrual of and failure to fully and properly apply Ms. Greider's testimony as to the misconduct. P. 6-8, 20-21.
- 29. The ALJ's misconstrual of failure to fully and properly apply Ms. Rich's testimony as to the misconduct. P. 6-8, 14-16, 20-21.
- 30. The ALJ's failure to find that Consolidated did not violate Section 8(a)(5) of the Act as alleged. P. 18.
- 31. The ALJ's finding that with regard to the incidents of misconduct that the misconduct either did not occur, or was not sufficiently egregious to warrant the discipline imposed. P. 19.
- 32. The ALJ's finding that Ms. "Weaver engaged in no misconduct at all," which is contrary to the record. P. 20. Consolidated further excepts to the ALJ's failure to follow precedent in failing to find that Ms. Weaver's conduct forfeited protection of the Act. P. 20.
- 33. The ALJ's finding that Ms. Hudson and Ms. Weaver did not endanger non-striking employees, P. 21, which is contrary to the record.
- 34. The ALJ's finding that Ms. Hudson engaged in no misconduct with regard to Ms. Greider or Mr. Rankin, which is contrary to the record. Consolidated further excepts to the ALJ's failure to follow precedent in failing to find that Ms. Hudson's conduct forfeited protection of the Act. P. 21.

- 35. The ALJ's finding and reliance upon his finding that "(t)he instances in which the Board has found that strikers have forfeited the protection of the Act in almost all cases involve violent acts or threats of violent acts," P. 21, which is an erroneous legal statement and inappropriate legal standard.
- 36. The ALJ's finding that "(t)here is no case that supports a discharge for the type of conduct engaged in by the discriminatees in this case," as there are many cases, including those cited in Consolidated's post-hearing brief, that support a discharge for the misconduct engaged in by the disciplined employees in this case. P. 21.
- 37. The ALJ's reliance upon/consideration of the purported lack of police reports as to the incidents for findings that the General Counsel met its burden in demonstrating that incidents did not occur (P. 7-8, 14), for purposes of resolving witness credibility issues (P. 12), and for finding that Ms. Hudson and Ms. Weaver engaged in activity related to the strike during the Conley incident, P. 19, as this is an inappropriate basis on which to base these findings. In addition, Consolidated excepts to the ALJ's arbitrary refusal to rely upon Mr. Maxwell's admitted failure to call the police despite his outlandish and unsupported claim that he had been hit twice by Mr. Flood's vehicle in crediting Mr. Maxwell's self-serving account of the Flood incident. P. 4.
- 38. The ALJ's statement that in the case of Ms. Hudson and Ms. Weaver, the critical issues are whether the disciplined employees actually engaged in the alleged conduct, whether their actions in fact rise to the level of misconduct and whether their misconduct was serious enough to warrant discharge, as this statement applies to Ms. Hudson's and Ms. Weaver's non-strike-related conduct on a public highway directed at Mr. Conley and Mr. Diggs, P. 2, as this

fails to include whether Ms. Hudson and Ms. Weaver were engaged in strike-related conduct in the first place.

- 39. The ALJ's finding that Mr. Conley drove a Company "van" rather than a standard Company pickup-truck during the Conley incident as borne out by the evidence. P. 8.
- 40. The ALJ's finding that the Conley incident is the only incident by which Consolidated "could possibly justify the discharge of Hudson and Weaver," as the Rankin and Greider incidents also justify termination. Consolidated also excepts to this finding to the extent that impermissibly places the burden of proof on the Company rather than the General Counsel. P. 8.
- 41. The ALJ's finding that Mr. Conley's and to some extent Mr Diggs' testimony "is self-serving and thus should be approached with some degree of caution," P. 8, which is contrary to the record.
- 42. The ALJ's failure to approach Ms. Hudson's and Ms. Weaver's testimony as to any of the incidents "with some degree of caution" (and, in fact, with any degree of caution) despite his statement that their testimony is "self-serving and thus should be approached with some degree of caution" and in particularly in light of the inherent inconsistency in their testimony in that they claimed to be engaged in ambulatory picketing while admitting that they were driving in front of Mr. Conley and Mr. Diggs. P. 8.
- 43. The ALJ's finding that the credibility issues as to the Conley incident "can be resolved largely on the basis of the testimony of Respondent's witnesses, their consistency with the contemporaneous reports they filed and the consistency of Respondent's witnesses with each other," in that Ms. Hudson's and Ms. Weaver's inconsistent testimony is very pertinent to credibility issues. P. 9. In so excepting, Consolidated excepts to the ALJ's failure to credit fully

the Company's witnesses as to the incident, and the ALJ's utter failure to consider the inherent improbabilities, inconsistencies and admissions in Ms. Weaver's and Ms. Hudson's testimony to this incident. P. 9.

- 44. The ALJ's finding and reliance upon/consideration of the finding that "[Mr.] Conley is a manager who understands that his employer terminated [Ms.] Hudson and [Ms.] Weaver and that his employer would very much like them to remain terminated," which is unsupported. Consolidated further excepts to any reliance upon/consideration of this finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 9.
- 45. The ALJ's finding and reliance upon/consideration of the finding that "it is quite clear that many of Respondent's managers were very angry about the strike and the conduct of the strikers at Rutledge," which is unsupported. Consolidated further excepts to any reliance upon/consideration of this erroneous finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 9.
- 46. The ALJ's finding and reliance upon/consideration of the finding that "[Mr.] Conley is likely to have been angry about the fact that [Ms.] Hudson and [Ms.] Weaver were following him," P. 9, which is unsupported.
- 47. The ALJ's crediting of Ms. Hudson and Ms. Weaver that they passed Mr. Conley in the area of the Sarah Bush Hospital or further east. In so excepting, Consolidated excepts to the failure of the ALJ to consider the discrepancy in Ms. Hudson's and Ms. Weaver's testimony in this regard. Consolidated further excepts to any reliance upon/consideration of this erroneous finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 9.

- 48. The ALJ's finding that "(i)f [Mr.] Conley did not see [Ms.] Weaver for ¾ or a half a mile and then a minute passed before he saw [Ms.] Hudson, as he testified at Tr. 877-78, this would indicate that [Ms.] Hudson and [Ms.] Weaver's testimony is more accurate than [Mr.] Conley's." P. 9. In so excepting, Consolidated excepts to the ALJ's erroneous characterization of Mr. Conley's testimony at Tr. 877-78. P. 9.
- 49. The ALJ's finding that Mr. Conley could have passed Ms. Weaver at the time that she passed him. In so excepting, Consolidated excepts to any reliance upon/consideration of this finding in that it is irrelevant to, or has at most minimal probative bearing on the issues of whether or not the Company terminated Ms. Weaver and Ms. Hudson for activity unrelated to the strike, and alternatively, whether Ms. Weaver and Ms. Hudson engaged in misconduct of a serious nature. P. 9-10.
- 50. The ALJ's finding that when Mr. Conley used the word "cut" in his report he meant nothing more than Ms. Weaver and Ms. Hudson changed lanes in front of him, P. 9, which is contrary to the testimony.
- 51. In reciting Mr. Conley's testimony, the ALJ's failure to find that Mr. Conley was forced to slow down due to Ms. Weaver and Ms. Hudson slowing down as he testified. P. 9-12. In so excepting, Consolidated excepts to the ALJ's finding that Ms. Weaver and Ms. Hudson may have slowed down due to a change in the speed limit on the road, P. 10, which is unsupported.
- 52. The ALJ's finding that "if [Mr.] Conley was boxed in west of Sarah Bush, he could have avoided travelling behind [Ms.] Hudson and [Ms.] Weaver by turning north into the road leading to Sarah Bush, south into the Airport Road or a little further east on Loxa Road, either north or south" in that this finding is irrelevant to or has at most minimal probative bearing

on the issues of whether or not the Company terminated Ms. Weaver and Ms. Hudson for activity unrelated to the strike, and alternatively, whether Ms. Weaver and Ms. Hudson engaged in misconduct of a serious nature. P. 10.

- 53. The ALJ's finding that "[o]n cross-examination, [Mr.] Conley was somewhat tentative about where [Ms.] Hudson first pulled parallel to [Ms.] Weaver." Consolidated further excepts to any reliance upon/consideration of this finding in that it is irrelevant to, or has at most minimal probative bearing on the issues of the case. P. 10.
- 54. The ALJ's mischaracterization of Mr. Conley's testimony as to his inability to pass Ms. Hudson in that he clearly testified that she "cut him off." P. 10.
- 55. The ALJ's misconstrual of Mr. Conley's testimony that he "did not believe that [Ms.] Hudson nearly caused an accident when she moved back in the left lane" in that the ALJ failed to consider Mr. Conley's testimony that she was not driving safely. P. 10.
- 56. The ALJ's failure to apply his crediting of Mr. Conley's testimony that at some point he was in the left lane on Route 16 behind Ms. Hudson. P. 10.
- 57. The ALJ's finding that Mr. Diggs' testimony corroborates the testimony of Ms. Hudson and Ms. Weaver that Ms. Hudson never "cut off" Conley, as it does not. Consolidated further excepts to the ALJ's misconstrual of Mr. Diggs' testimony at Tr. 966-67. P. 10.
- 58. The ALJ's finding that Ms. Hudson did not cut Mr. Conley off, as this is contrary to the record. In so excepting, Consolidated excepts to the ALJ's apparent crediting of Ms. Hudson's testimony that "she did not move back into the left lane and that [Mr.] Conley did not try to pass her before he turned south." P. 10.

- 59. The ALJ's finding that Mr. Diggs did not corroborate Mr. Conley's testimony that Conley had to drive an extra 4.97 miles to reach the jobsite in that it misconstrues both Mr. Conley's and Mr. Diggs' testimony. Consolidated further excepts to any reliance upon/consideration of this finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 11.
- 60. The ALJ's reliance upon/consideration of Mr. Conley's testimony at Tr. 888 that he did not know how long he was in the left lane behind Ms. Hudson in that it fails to take into account his testimony that he knows it was long enough to determine that she would not let him pass. P. 11.
- 61. The ALJ's finding that "if, as [Mr.] Conley testified, he got back into the right lane prior to Loxa Road, [Mr.] Conley could have turned right or left (north or south) on Loxa rather than continue on Rt. 16 for another mile to County Road 1200 E, as he testified" in that this finding is irrelevant to or has at most minimal probative bearing on the issues of whether or not the Company terminated Ms. Weaver and Ms. Hudson for activity unrelated to the strike, and alternatively, whether Ms. Weaver and Ms. Hudson engaged in misconduct of a serious nature. P. 11.
- 62. The ALJ's reliance upon/consideration of his unfounded statement/finding that "there was no need for [Mr.] Conley to remain boxed in by [Ms.] Hudson and [Ms.] Weaver if [Ms.] Hudson got into the left lane much west of Sarah Bush." Consolidated further excepts to any reliance upon/consideration of this finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 11.

- 63. The ALJ's finding that there is no credible evidence that Mr. Conley was stuck behind Ms. Hudson and Ms. Weaver for several miles in that the term "several" is ambiguous and to the extent the ALJ misconstrues Mr. Conley's Huffmaster report. P. 11.
- 64. The ALJ's failure to apply the clear discrepancy he recognized in Ms. Hudson's and Ms. Weaver's testimony as to where Mr. Conley turned off of Highway 16 (the Company notes that in his citation to Tr. 789, the ALJ likely meant to cite to Tr. 780). P. 11.
- 65. The ALJ's finding that in his Huffmaster report, Mr. Conley "did not assert that he tried to pass [Ms.] Hudson twice as he did in Tr. 866" in that it misconstrues Mr. Conley's handwritten statement in the Huffmaster report. Consolidated further excepts to the ALJ's apparent expectation and requirement of the Company that Mr. Conley's handwritten report of the incident mirror the more extended live testimony he provided as to the incident. In so doing, the Company objects to the ALJ's apparent erroneous shifting of the burden of proof to the Company. P. 11-12.
- 66. The ALJ's finding that he does not credit Mr. Conley's testimony that he tried to pass Ms. Hudson twice, P. 12, as Mr. Conley's testimony is accurate.
- 67. The ALJ's finding that he does not credit Mr. Conley's testimony regarding the period of time that Ms. Hudson and Ms. Weaver were parallel to each other, as Mr. Conley's testimony is accurate. In so doing, Consolidated excepts to the ALJ's failure to consider the inconsistencies in Ms. Hudson's and Ms. Weaver's testimony and the inherent improbabilities of Ms. Weaver's testimony in this regard. P. 12.
- 68. The ALJ's finding "that [Ms.] Hudson prevented [Mr.] Conley from passing him by staying in the left lane, for a mile or less and not more than one minute" in that Ms. Hudson

prevented Mr. Conley from passing him for a greater distance and a greater period of time. P. 12.

- 69. The ALJ's failure to apply his finding that Ms. Hudson did indeed prevent Mr. Conley from passing him. P. 12.
- 70. The ALJ's finding that Mr. Diggs did not "remember" Mr. Conley being blocked in for a significant period of time and his crediting of Ms. Hudson and Ms. Weaver on this basis, as Mr. Diggs was not asked this question. Consolidated further excepts in that this finding shifts the burden of proof to the Company. Consolidated further excepts to the ALJ's failure to consider Mr. Diggs' testimony, which is materially consistent with Mr. Conley's testimony and indicates that Ms. Weaver and Ms. Hudson engaged in misconduct. P. 12.
- 71. The ALJ's finding that "(a) major reason I credit [Ms.] Hudson and [Ms.] Weaver over [Mr.] Conley is the fact that [Mr.] Conley did not bother to report this incident to the police as he had been instructed," which is contrary to law and the record. Consolidated also excepts to the ALJ's failure to properly consider Conley's testimony as to his understanding of Huffmaster's guidelines. Consolidated further excepts to the ALJ's failure to consider the actual instructions given to Mr. Conley following the incident, and the ALJ's failure to consider GC-Ex. 20, which provided the instructions to employees to report all incidents to the Command Center. Consolidated also excepts in that the ALJ's finding misconstrues the Huffmaster written guidelines. Consolidated further excepts to reliance upon/consideration of this erroneous finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 12.
- 72. The ALJ's reliance upon/consideration of his finding that "(i)f [Mr.] Conley related to [Mr.] Jurka that [Ms.] Hudson and [Ms.] Weaver were endangering him and/others on Highway 16; one would think [Mr.] Jurka or [Mr.] Conley would call the Mattoon police since

they had [Ms.] Hudson and [Ms.] Weaver's license plate numbers," P. 12, as it ignores the record and is contrary to law.

- 73. The ALJ's finding that "(n)obody apparently advised [Mr.] Conley to contact the police per the Huffmaster instructions" in that mischaracterizes the Huffmaster guidance as "instructions." Consolidated further excepts to the ALJ's failure to consider the actual instructions given to Mr. Conley following the incident and imposition of a legal requirement to notify the police of striker misconduct. Consolidated further excepts to reliance upon/consideration of this finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 12.
- 74. The ALJ's finding that "(t)he fact that nobody from management interviewed [Mr.] Diggs or took a statement from him undercuts [Consolidated's] contentions as to how serious it considered the alleged misconduct of [Ms.] Hudson and [Ms.] Weaver," P. 12-13, as it ignores the evidence and imposes an erroneous legal standard.
- 75. The ALJ's finding that Mr. Diggs "did not testify about the most disputed facts regarding this incident, which are where on Rt. 16 [Mr.] Conley was prevented from passing, how long he was prevented from passing and where he turned south to get off of Rt. 16" and that this (erroneous) finding is "very significant in making a credibility resolution between Conley on the one hand and [Ms.] Weaver and [Ms.] Hudson on the other." In so excepting, the Company excepts to the ALJ's statement that where Mr. Conley turned south is a disputed fact, as (as the ALJ recognized) Mr. Conley's testimony is consistent with Ms. Weaver's testimony on this point. The Company further excepts to the ALJ's characterization of the above facts as the "most disputed" facts, given that other important facts are at dispute, including whether

Ms. Hudson cut Mr. Conley off. The Company further excepts to the ALJ's erroneous shifting of the burden of proof from the General Counsel to the Company. P. 13.

- 76. The ALJ's finding that "(i)f something very usual happened, such as [Ms.] Weaver and [Ms.] Hudson driving for a mile and a half in a manner that [Mr.] Conley could not pass them, I would think that [Mr.] Diggs, a witness favorably disposed to [Consolidated] would remember it." Consolidated further excepts to this finding in that it misconstrues Mr. Diggs' testimony and shifts the burden of proof to the Company. P. 13.
- 77. The ALJ's conclusion that Ms. Weaver and Ms. Hudson did not drive for a mile and a half in a manner such that Mr. Conley could not pass them, P. 13, which is not supported by the record.
- 78. The ALJ's finding and reliance upon Mr. Diggs' "concession that [Ms.] Weaver and [Ms.] Hudson may have been driving at the speed limit." In so excepting, Consolidated excepts to the ALJ's misconstrual of Mr. Diggs testimony as to whether Ms. Weaver and Ms. Hudson were driving the speed limit. P. 13.
- 79. The ALJ's finding that the record establishes that Ms. Weaver "engaged in absolutely no misconduct with regard to [Mr.] Conley" (and apparently with regard to Mr. Diggs as well), P. 13, which is contrary to the record.
- 80. The ALJ's finding that that assuming Ms. Weaver did engage in misconduct, it was "insubstantial," and the ALJ's failure to find that Ms. Weaver engaged in more than "merely" honking, passing Mr. Conley and switching into the right lane in front of him, P. 13, which is contrary to the record.

- 81. The ALJ's finding that misconduct by Ms. Hudson, "if any, provides no justification for [Ms.] Hudson's discharge," P. 13, which is both contrary to the record and legal precedent.
- 82. The ALJ's findings that "neither [Ms.] Hudson nor [Ms.] Weaver committed an act of violence" and that the Company did not demonstrate that either Ms. Hudson or Ms. Weaver violated any company policy regarding employee conduct as to the Conley incident, the latter of which is contrary to the record. The Company further objects to the ALJ's apparent determination that such findings are relevant to the legal issue of whether either engaged in the alleged misconduct. The Company further objects to the extent the ALJ erroneously shifted the General Counsel's burden of demonstrating that Ms. Hudson and Ms. Weaver did not engage in the alleged misconduct to the Company. P. 13.
- 83. The ALJ's statement that Ms. Hudson's and Ms. Weaver's silence at their suspension meetings "has very little relevance in resolving credibility," P. 9, as it does have relevance to resolving credibility issues.
- 84. In finding that the General Counsel met its burden in showing that the disciplined employees at issue were strikers and that the Company took action against the employee for conduct related to the strike, the ALJ's finding that the Company's action against Ms. Weaver and Ms. Hudson as to the Conley incident was related to the strike, which is contrary to the record. In so finding, the Company excepts to the ALJ's crediting of Ms. Hudson's and Ms. Weaver's alleged testimony (erroneously recited by the ALJ) "that they followed Troy Conley in order to determine whether he was going to perform bargaining unit work at a commercial site, so that the Union could decide whether to picket that worksite." P. 19. Moreover, the Company excepts to the ALJ's failure to apply his finding (and the undisputed

evidence) that Ms. Hudson and Ms. Weaver were not following Mr. Conley, but rather were ahead of him and his erroneous and illogical crediting of Ms. Hudson and Ms. Weaver for their post-hoc claim that they were engaged in ambulatory picketing by "keeping track of him in their rear view mirrors" purportedly for the purpose of following him to a worksite. P. 19. Because the ALJ should not have found that Ms. Hudson's and Ms. Weaver's conduct towards Mr. Conley and Mr. Diggs was ambulatory picketing and was strike-related and the General Counsel did not offer any proof of anti-union animus, Ms. Hudson's and Ms. Weaver's termination should not be disturbed by the Board. P. 18-19.

- 85. The ALJ's finding that "the fact that Respondent did not contact the police but rather dealt with [the Conley] incident only through the procedures that it had established to deal with strike misconduct (filing a report with Huffmaster) belies [its] assertion" that the conduct of Ms. Hudson and Ms. Weaver as to Mr. Conley and Mr. Diggs was not strike-related and is outside of the Board's purview, P. 19, as the ALJ should have considered Ms. Hudson's and Ms. Weaver's conduct in making this determination.
- 86. The ALJ's finding that "(w)ith regard to the Greider and Rankin incidents I find there was absolutely no misconduct by [Ms.] Hudson. Even assuming some degree of misconduct by Ms. Hudson in the Conley incident, any ambiguity as to whether it was serious enough to forfeit the protection of the Act should be resolved against Respondent," which is contrary to the record and law. P. 21. As to the latter statement, Consolidated excepts to its factual finding and its inherent determination that the conduct engaged in by Ms. Hudson and Ms. Weaver against Mr. Conley and Mr. Diggs was striker-related. Consolidated also excepts to the ALJ's erroneous shifting of the burden of proof from the General Counsel to the Company by resolving an "ambiguity" on a point in which the General Counsel had the burden of proof

against the Company. Consolidated further excepts to the ALJ's failure to properly apply his finding that Hudson did prevent Conley from passing her on P. 12 of his decision. Consolidated further excepts to the ALJ's failure to follow precedent in failing to find that Ms. Hudson's conduct forfeited protection of the Act. P. 21.

- 87. The ALJ's finding that Ms. Weaver's "involvement in the Conley incident was following him on Route 16, Charleston Boulevard, passing him and moving into the right lane in front of him. There is no credible evidence that she did anything threatening or dangerous," P. 20, which is both contrary to the record and is not the proper legal inquiry.
- 88. The ALJ's irrelevant finding and reliance upon/consideration of the finding that "(w)hile [Mr.] Conley may have been intimidated by the fact that strikers were following him to his worksite, they had a protected right to do so," P. 20, in that Ms. Hudson and Ms. Weaver were not following him to a worksite, and that this inquiry is not the appropriate inquiry given that the Company terminated them for conduct that occurred in front of Mr. Conley and Mr. Diggs. Consolidated further excepts to the ALJ's citation to and consideration of/reliance upon cases involving the following of employees. P. 20-21.
- 89. The ALJ's citation to and reliance upon/consideration of the Board's decision in *Gibraltar Sprocket Co.* for the proposition that "in circumstances far more egregious than the instant matter, that simply following a nonstriker, in the absence of violence, is an [sic] insufficient to deprive a striker of the protections of the Act," as such citation is both inapplicable to Ms. Hudson's and Ms. Weaver's admitted conduct and misconstrues Ms. Hudson's and Ms. Weaver's conduct. P. 20.
- 90. The ALJ's citation to and reliance upon/consideration of the Board's decisions in *Otsego Ski-Club*, which the ALJ erroneously characterized as similar to the case at hand, *Federal*

Prescription Services, Inc. and Consolidated Supply Co., Inc., as these cases are inapplicable. Consolidated also excepts the ALJ's finding that "(l)ike [Ms.] Hudson's conduct, the strikers' conduct may have been annoying, but the Board found it was insufficiently aggravated to warrant their discharge for misconduct," P. 20-21, as this is a misapplication of the facts and law.

- 91. The ALJ's finding that "if [Ms. Hudson] engaged in misconduct with regard to [Mr.] Conley, by preventing him from passing her, even if this was for a minute and a half and for a mile and a half, this conduct was not egregious enough to warrant her termination, particularly in light of the fact that she was a 39-year employee with no prior disciplinary record," P. 21, as this misapplies the record of Ms. Hudson's misconduct and misapplies the law.
- 92. The ALJ's statement that Consolidated provided "little in the way of specifics" to Ms. Hudson and Ms. Weaver at their suspension meetings, P. 9, which is contrary to the record.
- 93. The ALJ's failure to note that the incident involving Mr. Rankin as he left Respondent's premises implicated a threat to public safety, P. 2, as Ms. Hudson's conduct (participated in by Ms. Weaver) did implicate a threat to public safety.
- 94. The ALJ's finding that there were people on the roadway on 17th Street during the Rankin incident, which is unsupported as to the relevant portion of 17th Street in which the incident took place, and that such finding has relevance or probative value. P. 13.
- 95. The ALJ's finding that "(t)here is no evidence that [Mr.] Rankin could not have turned into the Pilson's lot and cut through to Landlake Boulevard as [Ms.] Greider had done about an hour previous to this incident." P. 13. In so excepting, Consolidated excepts to the failure to consider Mr. Rankin's testimony which refutes this finding. Consolidated further

excepts to any reliance upon/consideration of this erroneous finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case in that it fails to inquire into whether Ms. Hudson actually impeded Mr. Rankin's progress as he and others testified to. P. 13.

- 96. The ALJ's finding that Mr. Rankin "drove past two entrances to the [Pilson's] lot and then sped past Ms. [Hudson] on her left on 17th street" in that in mischaracterizes the evidence. P. 13.
- 97. The ALJ's finding that Mr. Rankin's testimony that picketers signaled for Ms. Hudson to get in front of him is untrue. P. 14.
- 98. The ALJ's finding that "(i)t is clear that [Ms.] Hudson was in front of [Mr.] Rankin only because the Huffmaster guard prevented him from turning onto 17th Street in front of her," P. 14, which is not supported by the evidence.
- 99. The ALJ's failure to credit Mr. Rankin's testimony that Ms. Hudson moved to the left of the road to block him from passing because a description of this incident was not contained in his handwritten Huffmaster report. Consolidated further excepts to the ALJ's apparent expectation and requirement of the Company that Mr. Rankin's handwritten report of the incident mirror the more extended live testimony he provided as to the incident. In so doing, the Company objects to the ALJ's apparent erroneous shifting of the burden of proof to the Company. Consolidated further excepts to the ALJ's failure to consider the testimony of three neutral witnesses supporting Mr. Rankin's testimony. P. 14.
- 100. The ALJ's finding that Mr. Rankin's (alleged) testimony that he passed Ms. Hudson's vehicle only when there were no cars on the side of the street supports her (alleged) testimony that she was driving very slowly because of the parked cars and people in the

street and not to harass Mr. Rankin. Consolidated further excepts to this finding in that it misconstrues both Mr. Rankin's and Ms. Hudson's testimony. P. 14.

- 101. The ALJ's erroneous findings that neither Ms. Hudson nor Ms. Weaver committed any act of workplace violence or violated any company policy regarding employee conduct as to the Rankin incident, which is contrary to the record. The Company further objects to the ALJ's apparent determination that such findings are relevant to the legal issue of whether either engaged in the alleged misconduct and imposition of a violence requirement in striker misconduct cases. The Company further objects to the extent the ALJ erroneously shifted the General Counsel's burden of demonstrating that Ms. Hudson and Ms. Weaver did not engage in the alleged misconduct to the Company. P. 14.
- 102. The ALJ's basing his (his objected to) finding that the record establishes that neither Ms. Hudson nor Ms. Weaver committed any workplace violence or violated any Company policy in part on "the fact that no police reports were filed for their conduct, such as stop/starting in front of vehicles, which is clearly illegal," in that it both misconstrues the record and imposes a requirement contrary to law. Consolidated further excepts to the ALJ's reliance upon/consideration of upon this finding for determination of whether the General Counsel met its burden in demonstrating that Ms. Hudson and Ms. Weaver did not engage in the alleged misconduct. P. 14.
- 103. The ALJ's finding that "(a)ssuming [Ms.] Hudson's car moved laterally there is no basis for concluding she did so to harass [Mr.] Rankin," which is contrary to the record. P. 14. As part of this erroneous finding, Consolidated excepts to the ALJ's illogical statement that "(i)t is just as likely that she did so to avoid hitting cars, people or in reaction to the truck coming towards her from the north," P. 14-15, which is contrary to the record.

- 104. The ALJ's finding that Ms. Walters did not see Ms. Hudson swerve, in that it mischaracterizes Ms. Walters' testimony. P. 14.
- 105. The ALJ's finding that "(n)either "[Ms.] Walters nor Jonell Rich saw anything that prevented [Mr.] Rankin from turning into the Pilson's lot, as [Ms.] Greider did an hour earlier to avoid travelling behind [Ms.] Hudson" in relying upon/determining whether Ms. Hudson and Ms. Weaver engaged in misconduct during the Rankin incident in that it ignores Mr. Rankin's testimony, ignores Ms. Walters and Ms. Rich's testimony as to material issues, is ultimately not determinative as to whether Ms. Hudson engaged in serious strike misconduct during the Rankin incident and imposes a duty to escape on Mr. Rankin. P. 15.
- 106. The ALJ's finding that none of the three neutral witnesses that observed the Rankin incident, Ms. Walters, Ms. Rich and Ms. Dasenbrock, "are particularly reliable witnesses as to what transpired," which is contrary to the record, and his apparently basing this determination on the their testimony that they did not remember the truck or car passing Ms. Hudson and Mr. Rankin going south, a minor detail. P. 15.
- 107. The ALJ's finding that that Ms. Dasenbrock's and Ms. Rich's testimony regarding the Rankin incident "is inconsistent in several material respects," P. 15, in that Ms. Dasenbrock's and Ms. Rich's testimony is not inconsistent "in several material respects." Consolidated further excepts to the ALJ's failure to fully apply this notion to Ms. Hudson's and Ms. Weaver's blatantly inconsistent testimony in the Conley incident. Consolidated further excepts to the ALJ's failure to apply their testimony in finding that Ms. Hudson and Ms. Weaver engaged in serious strike misconduct during the Rankin incident. P. 15.
- 108. The ALJ's reliance upon/consideration of his findings that: a) Ms. Rich was not interviewed about by anyone until February 14, 2013, and then only about the Greider incident;

and b) there is no credible evidence as to when anyone discussed the Rankin incident with Ms. Rich, Ms. Dasenbrock and Ms. Walters, as diminishing these witnesses' credibility as to the Rankin incident. Consolidated further excepts to the ALJ's finding to the extent it requires the Company to interview each witness to an event prior to presenting such witness at the hearing, it affects the credibility of these witnesses or it relieves or reduces the General Counsel's burden in demonstrating that Ms. Hudson Ms. Weaver did not engage in the alleged misconduct. P. 15.

- 109. The ALJ's reliance upon/consideration of his finding that Mr. Rankin did not identify any witnesses to his encounter with Ms. Hudson on his Huffmaster report, whereas Ms. Greider identified Ms. Rich, in resolving credibility issues and imposing a requirement that does not exist. Consolidated further excepts to the ALJ's illogical assumption that Mr. Rankin would or should have had reason to know that a particular witness on the second floor of the building would have seen the incident. P. 15.
- 110. The ALJ's finding that Ms. Walters testified that she spoke about the Rankin incident "just with the girls in my pod" to the extent the ALJ relied upon/considered it in making credibility determinations or any determination as to whether Ms. Hudson and/or Ms. Weaver engaged in serious strike misconduct during the Rankin incident, as he appeared to do. P. 15.
- 111. The ALJ's findings that "Gary Patrem told the Union at the suspension or termination meetings that [Ms.] Rich, [Ms.] Walters and [Ms.] Dasenbrock were witnesses to the Greider incident, and apparently did not mention that they witnessed the Rankin incident, Tr. 288-89. However, [Ms.] Walters testified that she did not see the Greider incident, and [Ms.] Dasenbrock testified she only saw part of it and never spoke to [Mr.] Patrem about it," P. 15, to the extent the ALJ relied upon/considered these findings in making credibility

determinations or any determination as to whether Ms. Hudson and/or Ms. Weaver engaged in serious strike misconduct during the Rankin incident, as he appeared to do. P. 15.

- 112. The ALJ's erroneous mischaracterization of the evidence and finding that the Rankin incident lasted "for a very brief period," P. 16, which is not only vague but also unsupported by the record.
- 113. The ALJ's finding and reliance upon/consideration of his finding in resolving credibility issues that the Rankin incident did not affect any of the neutral witnesses (Ms. Walters, Ms. Rich and Ms. Dasenbrock) personally. Consolidated excepts to the ALJ's failure to find their objective testimony more reliable than the self-interested, self-serving and unsupported testimony of Ms. Hudson and Ms. Weaver on this basis. P. 16.
- 114. The ALJ's finding and reliance upon/consideration of the finding that "(m)any of the customer service representatives were very upset about the conduct of the strikers" and that Ms. "Rich was certainly one of those, give [sic] her assumptions about Pat Hudson's motives while driving in front of [Ms.] Greider and [Mr.] Rankin," P. 16, which is unsupported by the record and fails to apply Ms. Rich's materially consistent testimony.
- 115. The ALJ's finding and reliance upon/consideration of his finding that "(b)y the time of [sic] anyone talked to [Ms.] Walters about the Rankin incident, she certainly was upset about her encounter with Eric Williamson on December 11," P. 16, as this finding does not demonstrate that Ms. Walters was not truthful or reliable in her testimony regarding the Rankin incident.
- 116. The ALJ's statement that "(t)here is no evidence of harassment in the Huffmaster videos, or in the Huffmaster statements of [Ms.] Greider and [Mr.] Rankin, which is all

Respondent relied upon in disciplining" Ms. Hudson and Ms. Weaver for these incidents, P. 20, which is contrary to the evidence. P. 20.

- 117. The ALJ's finding that "[Ms.] Weaver's only involvement in the Rankin incident was sitting in the back seat of [Ms.] Hudson's car, which was in front of [Mr.] Rankin" in that the application of such a finding fails to consider her active participation in this incident, the totality of the circumstances, and other incidents. P. 20.
- 118. The ALJ's apparent finding that Ms. Weaver ended up behind Ms. Greider due to the actions of the Huffmaster security guard in allowing Ms. Greider to exit the parking lot in that it is irrelevant to or has at most minimal probative bearing on the actual inquiry of whether the actions taken by Ms. Hudson and Ms. Weaver against Ms. Greider following her exiting of the parking lot. P. 6.
- 119. The ALJ's statement that "(t)here is absolutely no basis for questioning the testimony of [Ms.] Hudson and [Ms.] Weaver that they were on their way from Rutledge to the corporate building to picket at the latter site," P. 6, which is not supported by the record.
- 120. The ALJ's finding that "(t)here is absolutely no basis for concluding that [Ms.] Greider's car ended up between [Ms.] Hudson and [Ms.] Weaver's vehicles other than by coincidence and the traffic control actions of the Huffmaster guard," P. 6, which is contrary to the record.
- 121. The ALJ's finding that "(t)here is no basis for concluding that [Ms.] Hudson and [Ms.] Weaver intentionally blocked [Ms.] Greider's car in," P. 6, which is contrary to the record.
- 122. The ALJ's finding that there is no evidence that Ms. Hudson drove slowly to harass or annoy Ms. Greider, P. 6, which is contrary to the record.

- 123. In stating that Ms. Greider filled out a Huffmaster incident report form on December 12, citing to the incorrect exhibit, GC-Ex. 12. P. 7.
- 124. The ALJ's reliance upon/consideration of the fact that in her Huffmaster report, Greider stated that "Pat refused to move or moved very slowly. She did not allege that Hudson was stopping and starting as she did at Tr. 1057" in that the ALJ's apparent expectation and requirement of the Company that Ms. Greider's handwritten report of the incident mirror the more extended live testimony she provided as to the incident is irrational and that there is no meaningful difference between "stopping and starting" or "refused to move or moved very slowly." P. 7.
- 125. The ALJ's finding that there is no credible evidence that Ms. Hudson was stopping/starting while in front of Ms. Greider, which ignores/disregards evidence and his citation solely to R-Ex. 1 for this proposition, when it is clear that the video does not encompass the majority of the misconduct. P. 7.
- 126. The ALJ's finding that the testimony of Ms. Greider and Ms. Rich that Ms. Hudson stopped and started in front of Ms. Greider "is solely the result on their animus towards Hudson, arising at least in part from the strike," which is unsupported and is contrary to law. P. 7. In so excepting, Consolidated also excepts to ALJ's failure to consider Ms. Rich's testimony that she is friends with Ms. Hudson and that Ms. Hudson attended her wedding and Ms. Greider's testimony that she never had any issues with Ms. Hudson prior to this incident. P. 7.
- 127. The ALJ's reliance upon/consideration of Chief Branson's statement that the misconduct Ms. Hudson and Ms. Weaver are accused of in the Greider incident is "a police matter" in determining whether the General Counsel met its burden in demonstrating that

Ms. Hudson and Ms. Weaver did not engage in misconduct towards Ms. Greider, which is not the appropriate inquiry factually or legally. Consolidated further excepts to the ALJ's mischaracterization of its argument. P. 7.

- 128. The ALJ's decision not to give any weight to Ms. Rich's testimony regarding the Greider incident. P. 7. In so doing, Consolidated excepts to the ALJ's apparent reliance upon/consideration of his finding that Ms. Rich was first interviewed two months after the incident and the ALJ's erroneous contention that Ms. Rich's testimony is inconsistent on material matters. P. 7.
- 129. The ALJ's finding that "(i)t is also clear that with respect to the Greider incident and the Rankin incident, [Ms.] Rich's recollection is either inaccurate or incomplete," P. 7, where Ms. Rich testified materially consistently as to material matters.
- 130. In failing to credit any portion of Ms. Rich's testimony as to the Greider incident, the ALJ's apparent reliance upon/consideration of an inconsistency in Ms. Rich's testimony as to whether she was sure if Ms. Hudson came to a complete stop in front of Ms. Greider, P. 7, which is of no consequence to the actual issue of whether Ms. Hudson engaged in serious strike misconduct.
- 131. The ALJ's reliance upon/consideration of finding that "neither Respondent nor Greider reported the incident to the Mattoon police, even though Mike Croy called the city police several times the same morning," as it imposes and assumes without support that Mr. Croy was involved in the determination of how to address Ms. Greider's report. Consolidated also excepts to the ALJ's reliance upon Ms. Greider not filing a police report, as this finding fails to consider the specific instructions given and inappropriately requires a police reporting requirement. P. 8.

- 132. The ALJ's stated reliance upon/consideration of Ms. Dasenbrock's testimony for support that there was "absolutely no misconduct by either [Ms.] Hudson or [Ms.] Weaver with regard to [Ms.] Greider," P. 8, which misconstrues her testimony, which does not support his finding.
- 133. The ALJ's finding that Ms. Dasenbrock's testimony as to how much of the Greider incident she saw was "ambiguous," and his citation to Tr. 1184 for this finding, as in Tr. 1184 Ms. Dasenbrock clearly stated how much of the incident she saw. Consolidated further excepts to the ALJ's completely unjustified characterization on Ms. Dasenbrock having not seen anything "unusual." P. 8.
- 134. The ALJ's finding that "the record establishes that there was absolutely no misconduct by either [Ms.] Hudson or [Ms.] Weaver with regard to [Ms.] Greider," as the record does indicate that Ms. Hudson and Ms. Weaver engaged in misconduct with regard to Ms. Greider. Consolidated also excepts to the ALJ's stated reliance upon "the fact that [Ms.] Greider did not file a police report as she had been instructed prior to this incident," P. 8, as this finding fails to consider the specific instructions given and inappropriately requires a police reporting requirement.
- 135. The ALJ's crediting of Ms. Weaver's testimony that she did not notice Ms. Greider's car in front of her "because there was no reason for her to notice which car the Huffmaster guard let out of the parking lot in front of her," P. 9, as there was reason for Ms. Weaver to notice Ms. Greider.
- 136. The ALJ's finding that Ms. Weaver "was behind [Ms.] Greider only because the Huffmaster guard held her up to allow [Ms.] Greider to exit the Rutledge parking lot," P. 20, which is contrary to the record.

- 137. The ALJ's finding that Mr. Flood's van hit Mr. Maxwell, P. 4, which is contrary to the record.
- 138. The ALJ's decision not to credit Mr. Flood's Huffmaster December 11, 2012 report and finding that it constitutes "hearsay evidence," where it is materially consistent with Mr. Fetchak's testimony, to the extent it contradicts Mr. Maxwell's (illogical and self-serving) account of the incident. P. 4.
- 139. The ALJ's finding that Mr. Fetchak's testimony did not contradict Maxwell's testimony in any material way, P. 4, which is contrary to the record.
- 140. The ALJ's crediting of Mr. Maxwell's account of the Flood incident, P. 4, which is illogical and unsupported.
- 141. The ALJ's failure to find that Mr. Maxwell was moving at a "very slow" pace between the van's headlight with an intent to impede Mr. Flood's vehicle prior to when the van hit him as testified to by Mr. Fetchak. P. 4.
- 142. The ALJ's finding that Mr. Maxwell fell forward into the Company vehicle and braced himself by putting his forearm on the hood, P. 4, which is contrary to the record.
- 143. The ALJ's failure to find that Mr. Maxwell yelled "Fuck You, Scab" at Flood instead of just "Fuck You," P. 4, as testified to by Mr. Fetchak and in Mr. Flood's written accounts.
- 144. The ALJ's failure to find that Mr. Maxwell made intentional contact with the Company vehicle, P. 4, as testified to by Mr. Fetchak and in Mr. Flood's written accounts.
- 145. The ALJ's finding that that Mr. Maxwell did not threaten anyone or commit any acts of violence on December 8, 2012 but rather "only briefly" impeded Mr. Flood's progress in leaving the Taylorsville garage, P. 4, which is contrary to the record.

- 146. The ALJ's finding that Mr. Maxwell did not impede Mr. Flood's progress more so than "the other five picketers," P. 4, which is contrary to the record.
- 147. The ALJ's apparent finding that the Company only suspended Mr. Maxwell for violating its workplace violence policy and his failure to consider other reasons in the record for his suspension. Consolidated further excepts to the ALJ's finding that Mr. Maxwell was not suspended for failing to move out of the way when Mr. Flood approached the picket line, P. 4, which is contrary to the record.
- 148. The ALJ's finding that the Company suspended Mr. Maxwell for offenses he did not commit, which is contrary to the record. Consolidated also excepts to the ALJ's apparent misapplication of the proper legal standard as to whether the General Counsel met its burden in demonstrating that Mr. Maxwell did not engage in the alleged misconduct or that such misconduct was not serious enough to lose protection of the Act. P. 4.
- 149. The ALJ's finding that the Company violated Section 8(a)(3) and (1) as alleged in suspending Mr. Maxwell, P. 4, as Consolidated did not violate the Act.
- 150. The ALJ's failure to find that Mr. Maxwell committed the alleged misconduct, P. 4, which is contrary to the record.
- 151. The ALJ's finding that "[Mr.] Maxwell did not threaten or intimidate Leon Flood," which is which is contrary to the record. Consolidated further excepts to the ALJ's failure to follow precedent in failing to find that Mr. Maxwell's conduct forfeited protection of the Act. P. 20.
- 152. The ALJ's finding that Mr. Flood struck Mr. Maxwell, P. 20, which is contrary to the record.

- 153. The ALJ's finding that "(w)hile [Mr.] Maxwell impeded [Mr.] Flood's exit from the Taylorsville parking lot for a very short period of time, he did not engage in the conduct for which he was suspended," P. 20, which is contrary to the record.
- 154. The ALJ's "skepticism" and apparent finding that the individual that Chief Branson described as a "hothead" during the strike was Mr. Williamson. P. 5.
- 155. The ALJ's finding that there is no probative value to the testimony of police officer Eric Finley because he did not see the incident for which Mr. Williamson was disciplined, P. 5-6, as Officer's Finley's testimony is probative as to Mr. Williamson's credibility and whether he was told by a police officer he did nothing wrong.
- 156. The ALJ's finding that the individual Mr. Finley identified as the person to whom he spoke, in Exhibit R-10 (a) and (b), Tr. 1104, is not Mr. Williamson, P. 6, as the evidence indicates that this person is Mr. Williamson.
- 157. The ALJ's finding that "there is no evidence that [Mr.] Williamson intentionally struck" Ms. Redfern's mirror, which contrary to the record, and reliance upon/consideration of that finding. P. 16.
- 158. The ALJ's reliance upon/consideration of Ms. Redfern's lack of contact with the police after the Williamson incident, where it ignores Ms. Redern's testimony as to why she did not contract the police. Consolidated further excepts to the ALJ's imposition of a police reporting requirement. P. 16.
- 159. The ALJ's reliance upon/consideration of Ms. Redfern's testimony that Mr. Williamson could have come into contact with her mirror accidentally and failure to properly analyze Ms. Redfern's testimony in this regard. P. 16.

- 160. The ALJ's reliance upon/consideration of his finding that Ms. Redfern never told anyone that she thought Mr. Williamson struck her vehicle, P. 16, which is irrelevant or has minimal probative value at best as to whether Mr. Williamson engaged in misconduct.
- 161. The ALJ's finding that "(i)t is not clear whether [Mr.] Williamson moved closer to the car as [Ms.] Redfern turned, or whether [Ms.] Redfern turned more sharply than other cars," P. 16, as the evidence indicates the former.
- 162. The ALJ's refusal to allow testimony as to Jenny Belleau's conversation with Ms. Redfern following the Williamson incident, Tr. 989, which Consolidated asserts would have demonstrated Ms. Redfern's present sense impression as to Mr. Williamson's conduct.
- 163. The ALJ's finding that "[Mr.] Williamson engaged in no misconduct by coming into contact with Dawn Redfern's mirror," which is contrary to the record. Consolidated further excepts to the ALJ's failure to follow precedent in failing to find that Ms. Redfern's conduct forfeited protection of the Act. P. 21.
- 164. The ALJ's finding that "[Mr.] Williamson's gesture does not justify his suspension," which is contrary to law, particularly in light of his other conduct and the surrounding circumstances. In so finding, Consolidated excepts to the ALJ's failure to consider that Mr. Williamson was not terminated but merely suspended for two days. Consolidated also excepts to the ALJ's citation to (and apparent reliance upon/consideration of) the Board's decisions in *Briar Crest Nursing Home*, *Callope Designs*, *Universal Truss*, and *General Chemical Corp.*, for his "conclusion that for a striking employee to forfeit the protection of the Act, an implied threat of bodily harm must accompany a vulgar or obscene gesture" and that "[Mr.] Williamson's gesture certainly does not meet this standard." P. 21-22.

- 165. The ALJ's finding that despite finding that Mr. Williamson's "gesture was totally uncalled for, and very unpleasant, it is difficult to see how it could have been perceived as an implied threat of violence or even future mistreatment (whatever that means) or have discouraged [Ms.] Walters from continuing to report to work during the strike," in that it applies an inappropriate legal standard (including imposition of a violence or threat of violence standard) rather than the proper legal standard of whether the conduct would reasonably tend to coerce or intimidate. Consolidated also excepts to the ALJ's failure to consider the surrounding circumstances of the strike as required under Board law in determining whether the General Counsel met its burden in demonstrating that Mr. Williamson's conduct did not reasonably tend to coerce or intimidate employees in the exercise of their Section 7 rights. P. 22.
- 166. The ALJ's finding that the Board's decisions in *Romal Iron Works Corp.* and *Bonanza Sirloin Pit* "are not relevant to issues of striker misconduct" and his mischaracterization of these relevant decisions which should have been considered. P. 22.
- 167. The ALJ's finding that "even assuming that [Mr.] Williamson's conduct forfeited the protection of the Act, I conclude that it is Respondent's burden under the *Wright Line* doctrine to establish that it would have suspended Williamson solely on the basis of the Tara Walters incident," in that it erroneously shifted the General Counsel's burden to the Company and applies the *Wright Line* standard, which is inapplicable to striker misconduct cases. P. 22.
- 168. The ALJ's finding that Mr. Williamson's gesture cannot be legitimately characterized as "sexual harassment" in that it is both incorrect and in that he cites (and apparently relies upon) an irrelevant decision, *Pomales v. Cellurlares Telefonica*, 441 F. 3d 79 (lst Cir. 2006), involving interpretation of Title VII for the proposition that "(i)n Title VII cases, a plaintiff generally cannot prevail on the basis on a single incident not involving physical

contact." In excepting to this finding, Consolidated notes that the ALJ failed to apply the correct inquiry, which is whether the General Counsel can meet its burden in demonstrating that the alleged misconduct did not occur or that such conduct is not sufficiently serious to lose protection of the Act. P. 22.

- 169. The ALJ's finding that Mike Croy called the Mattoon Police "frequently" on Monday, December 10, 2012, as the recipient of those calls indicates that he called "several times" rather than "frequently." Consolidated further excepts to any reliance upon/consideration of this finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 6.
- 170. The ALJ's finding that the Company conducted a meeting for workers at the Rutledge Building at about 8:30 a.m. "because many were very upset and angry about the behavior of the pickets." P. 6. In excepting, Consolidated excepts to the ALJ's citation to Tr. 999-1000, which does not support his unsupported finding and his apparent misconstrual of Dawn Redfern's testimony. Consolidated further excepts to any reliance upon/consideration of this erroneous finding in that it is irrelevant to or has at most minimal probative bearing on the issues of the case. P. 6.
- 171. The ALJ's finding that the Company and the Union reached agreement on a new contract on March 28, 2013 after the events pertaining to this case, when certain events pertinent to the case occurred after this date. P. 3.
- 172. In crediting their testimony, the ALJ's failure to consider the post-hoc, self-serving, contradictory nature of the disciplined employees in attempting to justify their misconduct. P. 4, 6-10, 12-14, 16, 20-22.

- 173. The ALJ's failure to allow testimony regarding the Union's intent of creating the picket line in order to create an intimidating, harassing environment, which is relevant to the issues at hand. Tr. 138-139.
- 174. The ALJ's failure to consider all of the circumstances in which the alleged misconduct occurred and his failure to permit testimony directed towards these issues, which is relevant to the issues at hand. Tr. 150-151.
- 175. The ALJ's incorrect statement and (apparent reliance upon in his analysis) that "isn't a picket line, supposed to be somewhat intimidating in general ... You're trying to discourage people from crossing. I mean if the picket line wasn't there, they'd drive in," to the extent such statement played any role in his decision and/or findings, as such statement and view is not consistent with Board law as to striker misconduct cases and should not have played a factor in any of the ALJ's factual findings and/or legal conclusions. Tr. 150.
- 176. The ALJ's failure to consider and allow questioning testimony directed to the effect of the strikers' misconduct on the targets, which is relevant to the issues at hand. Tr. 472, 993-94.

Consolidated hereby requests that oral argument be taken in this case.

Respectfully submitted this 10th day of January, 2014.

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CERTIFICATE OF SERVICE

I certify that on this 10th day of January, 2014, I caused the foregoing to be electronically filed the with the National Labor Relations Board at http://nlrb.gov and a copy of same to be served via electronic mail to the following:

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